IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2969 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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PRAVINBHAI PURSHOTTAMDAS PATEL & 10 - Applicant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR VIRAT G POPAT for Applicant(s) : 1 - 8.or Applicant(s) : 9 - 11.
MR PD BHATE PUBLIC PROSECUTOR for Respondent(s) : 1,
MR PA JADEJA for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 12/03/2007

ORAL JUDGMENT

1.0 By way of this application, the applicants have prayed to quash and set aside the FIR being I-C.R. No.595 of 2004 registered with Ellisbridge Police Station, Ahmedabad as well as the proceedings in Criminal Case No.13376 of 2005 pending before the learned Metropolitan Magistrate, Court No.22, Ahmedabad arising out of the said complaint.

2.0 The brief facts of the case are that the dispute in this application is with respect to a plot of land, which includes three sheds attached thereto along with some open land, in Asarwa Village in Ahmedabad. The said property was originally owned by one Mathurdas Govinddas. In the year 1968, said Mathurdas Govinddas gave the said property on lease to a Company named M/s. Prakash Textiles Pvt. Ltd,.

2.1 According to the applicants, on the death of said Mathurdas Govinddas, his two sons namely, Mukunddas and Gopaldas, i.e. respondents No.2 and 3 herein, became the owners of the said property. Respondent No.4 herein is the Power of Attorney Holder of respondent No.2, herein. For the said three sheds, M/s. Prakash Textile was paying an amount of Rs.15,307.50/- towards rent and another amount of Rs.7,500/ towards rent for the vacant land. Thereafter, the rent for the said three sheds was increased by another Rs.4,000/- on condition that the tenants shall have right to

create charge on the tenanted properties. It was also agreed between the parties that the said rent shall be increased at the rate of 10 per cent after every 10 years. Thereafter, documents in respect of the said agreement came to be executed between the parties.

2.2 Pursuant to the execution of the said documents, respondent No.4 filed the impugned complaint against applicant Nos.1 to 5 alleging that the aforesaid agreements executed between the parties are fabricated since respondent No.2 has not signed those documents.

2.3 Being aggrieved by the said complaint, applicant Nos. 1 to 5 preferred an application under Section 482 of the P.C. before this Court being Criminal Misc. Application No.8664 of 2005. The said application was, ultimately, withdrawn. Subsequently, applicant Nos.6 to 8 herein came to be joined as accused persons in the said complaint.

2.4 According to the applicants, thereafter, on account of intervention and mediation of some friends and relatives, a settlement came to be arrived at between the parties and a Memorandum of Understanding came to be executed on 22.03.2006. On the basis of the said M.O.U., the original accused persons as well as the original complainant, along with the owners of the property in question, jointly preferred the present application under Section 482 of the Cr.P.C. before this Court praying to quash and set aside the impugned complaint.

2.5 The matter has been listed for hearing time and again. Thereafter, in September, 2006, applicant Nos.9 to 11, herein suddenly change their stand and filed an application being Criminal Misc. Application No.10155 of 2006 praying to transpose them as respondent Nos.2 to 4 in the present application on the ground that the applicants Nos. 1 to 8 have not complied

with the terms and conditions of the M.O.U., and therefore, an amicable settlement could not be arrived at. The said application was allowed by this Court vide order dated 12th February, 2007 and applicant Nos. 9 to 11 were permitted to be transposed as respondent Nos. 2 to 4 in the present proceedings.

3.0 Learned Advocate for the applicants has contended that when the parties had jointly approached this Court by way of this application for quashing the impugned complaint on the basis of a settlement which has also been affirmed by both the sides, either of the parties, now, cannot be permitted to take a stand contrary to one taken by them while filing this application.

3.1 Learned Advocate for the applicants submitted that a mere assertion of a false claim in respect of a document does not amount to forgery. In support of his case learned Advocate has placed reliance on a decision of this Court

in the case of ***"Motising Gambhirsing Vs. State of Gujarat"*** reported in 1961 GLR 481 wherein at Para-12 it has been held as under,

> **"12.** In this case admittedly it is not the prosecution case that the appellant made the signature in the 4th column of Ex.12 in Ex.11. There is no evidence to prove that the signature in column 4 was made by the appellant. This is conceded by the learned Government Pleader. The appellant did not therefore make the whole of the document. Columns 1 2 and 3 were not false. The prosecution relied only on the entry in column 5 i.e. the initials as being a false document. According to the prosecution the initials of the accused in column 5 of Ex.12 in Ex.11 amount to an attestation of the entry Exh.12 which purports to be a receipt by deceased Hirabhai. Assuming that the initials of the accused in column 5 amount to an attestation of the signature in column 4 they amount to a statement that the signature in column 5 is the signature of Hirabhai Manorbhai. If the signature in column 4 is not of Hirabhai Manorbhai the attestation in column 5 would mean that the appellant made a false statement stating that the signature in column 4 is that of Hirabhai Manorbhai. That would amount to making a false statement and would not amount to making a false document. Even if the accused has made a part of the document namely column 5 of Ex.12 that part was in fact made or executed by the person by whom it purports to be executed namely the accused and therefore accused cannot be said to have made a false document. Including in a

> document certain false recitals or particulars is not forgery. The mere making of a false statement in a document would not come within sec.464 Indian Penal Code and would not amount to forgery. Here we are dealing with a receipt which the law does not require to be attested. It is not necessary to consider in this whether falsely attesting a document which the law requires to be attested would amount to forgery.”

3.2 Learned Advocate has also relied on decisions of this Court in the case of ***“State Vs. Maganbhai Jivramdas and Another”*** reported in 1984 GLT 21 and in the case of ***“State of Gujarat Vs. Motibhai Jethabhai Makwana”*** reported in 1992(2) GLH 306 wherein similar principle has been laid down.

3.3 Learned Advocate further submitted that there are no averments in the impugned complaint to the effect that the applicants had a fraudulent intention from the very beginning. Thus, the important ingredient to constitute an offence under Section 420 of Indian Penal Code is missing. In support of the same learned Advocate

has placed reliance on a decision of the Apex Court in the case of ***"Ajay Mitra Vs. State of M.P. And Ors."*** reported in (2003)3 SCC 11 wherein in Paras-16 and 17 it has been held has under,

> "**16 & 17.** A guilty intention is an essential ingredient of the offence of cheating. In other words "mens rea" on the pat of the accused must be established before he can be convicted of an offence of cheating. In order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered. Unless the complaint showed that the accused had dishonest or fraudulent intention at the time the complainant parted with the money, it would not amount to an offence under Section 420 of IPC and it may only amount to breach of contract."

3.4 Learned Advocate has placed reliance on other decisions of the Apex Court in the case of ***"Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi"*** reported in (2003)5 SCC 257 and in the case of ***"Anil Mahajan Vs. Bhor Industries Ltd. And Another"*** reported in (2005) 10 SCC 228 wherein similar principle has been laid down.

3.5 Learned Advocate further submitted that while preferring the present application, respondent Nos. 2 to 4 herein themselves have admitted that the dispute in question between them was of a purely civil nature and, therefore, the impugned complaint deserves to be quashed and set aside. Learned Advocate submitted that when the complainant himself has admitted the fact that the dispute in question was of a civil nature and, accordingly, has thereby agreed to amicably resolve the dispute, then he could not take a stand contrary to what was earlier agreed between the parties. In support of the same, learned Advocate has placed reliance on a decision of the Apex Court in the case of ***"Sardar Trilok Singh And Ors. Vs. Satya Deo Tripathi"*** reported in (1979)4 SCC 396 wherein, at Para-5 it has been held as under,

> "**5.** ...Obtaining signature of a person on blank sheet of papers by itself is not an offence of forgery of the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of

> the Penal Code making it an offence or when such a document is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on July 30, 1973 from the house of the respondent they could and id claim to have done so in exercise of their bona fide right of seizing the truck on the respondent's failure to pay the third monthly installment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck..."

3.6 Learned Advocate has also placed reliance on another decision of the Apex Court in the case of ***"Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre and Ors."*** reported in (1988)1 SCC 692 wherein similar principle has been laid down.

3.7 Learned Advocate submitted that since no specific allegations have been made in the complaint, the same is not maintainable under the law. In support of the same, learned Advocate has placed reliance on a decision of the Apex Court in the case of ***"Smt. Manju Gupta Vs. Lt.Col.M.S. Paintal"*** reported in (1982)2 SCC 412

wherein, it has been held that mere vague and indefinite allegations regarding forgery made by a complainant in a complaint who is not in a position to know as to who among the accused persons actually indulged in the alleged activities and in the absence of specific averments ascribing any overt act on the part of the accused persons, the complaint deserves to be quashed and set aside.

3.8 Learned Advocate has also relied upon a decision of the Apex Court in the case of ***"J.J. Irani Vs. State of Jharkhand & Another"*** reported in (2004)13 SCC 106 wherein similar principle has been laid down.

3.9 Learned Advocate has further submitted that since neither of the parties has derived any benefits nor any loss has been suffered by either of them on account of the execution of the documents in question, the impugned complaint deserves to be quashed and set aside. In support

of the same, learned Advocate has placed reliance on a decision of the Apex Court in the case of ***"State of U.P. Through CBI SPE, Lucknow Vs. R.K. Srivastava And Another"*** reported in (1989)4 SCC 59 wherein in Para-5 it has been held as under,

> "**5.** The question is as to whether the facts disclosed in the FIR constitute the offences with which the accused have been charged. It is manifestly clear from the allegations in the FIR that the respondent or the other accused had no intention whatsoever to make any wrongful gain or to make any wrongful loss to the Bank. They had accepted the said three cheques amount to Rs.54,600 and sent the same for clearance after debiting the LOC account. The said cheques have been encashed and the money was received by the State Bank of India. It may be that there was some delay in crediting the LOC account or that the money against the three cheques were credited in the accounts of the said Shri Sarwant Singh and his wife, but the allegations made either in the FIR or in the charge-sheet do not show that the respondent and the said P.C. Saxena had acted dishonestly, that is to say, acted with a deliberate intention to cause wrongful gain or wrongful loss. In our opinion, the High Court, has rightly held that the allegations made in the FIR do not constitute any offence of cheating, nor do they constitute any offence of forgery. It is true that it has been alleged that the said sum of Rs.54,600 was withdrawn on the basis of false credit entries made in the books of accounts of

> the Bank and connected credit and debit vouchers were also prepared and passed by the respondent and the other accused. When the said sum of Rs.54,600 had been allowed to be withdrawn by the said Shri Sarwant Singh and his wife, necessary entries had to be made in the books of accounts, but it is not understandable how these entries can be characterized as false entries. No document has been referred to in the FIR as the outcome of forgery."

3.10 Learned Advocate has submitted that since respondent Nos. 2 to 4 themselves have admitted that the dispute between the parties is essentially of a civil nature, a successive application under Section 482 of the Cr.P.C. is maintainable. In support of his case, learned Advocate has placed reliance on a decision of the Apex Court in the case of ***"Superintendent And Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Ors."*** reported in (1975)3 SCC 706 wherein in Para-2 it was held as under,

> "The facts and circumstances obtaining at the time of the subsequent application of respondent Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first

> respondent because, despite the rejection of the earlier application of the first respondent, the prosecution as far back as 1965 and the criminal case rested where it was for a period of over one and a half years. It was for this reason that, despite the earlier order, the High Court proceeded

3.11 Similar principle has been laid down by the Apex Court in the case of ***"V.D. Barot Vs. State of Gujarat And Ors."*** reported in (2002)10 SCC 688.

3.12 Learned Advocate submitted that this Court has powers to entertain an application under Section 482 of Cr.P.C. even after the filing of charge-sheet. Learned Advocate submitted that there is no express bar on this Court under the law that this Court could not entertain an application under Section 482 of the Cr.P.C. once the charge-sheet has been filed. In support of the same, learned Advocate has placed reliance on a decision of the Apex Court in the case of "***Bhaskar Chattoraj Vs. State of West Bengal"*** reported in 1991 Supp(2)SCC 574 wherein

in Para-3 it has been held as under,

> "**3.** This prosecution is instituted by a complaint given by one N.D. Narayan, Director of Sangita Estates Private Limited dated November 13, 1985 in continuation of the earlier complaint dated November 10, 1985 followed by a further report dated November 15, 1985 in which a vague allegation is leveled against the appellant reading, "We suspect that our Durwan has been moved away by Mrs. C. Solomon and Shir Bhaskar Chattoraj". We carefully and meticulously went through the entire reports as well as the statements of the witnesses recorded under Section 161 of the Criminal Procedure Code during the course of the investigation and on perusal of the records, we are satisfied that there is no material connecting the appellant with the alleged offence or criminal trespass. The learned counsel appearing on behalf of the respondent is not able to satisfy us showing any material that would justify the implication of the appellant with the offence for which he now stands charged. In our considered opinion, no conviction can be recorded on the mere vague allegations, that too made only in the petitioner dated November 15, 1985 and as such the entire proceedings as against this appellant is only an abuse of the process of the court. In view of the above circumstances, we quash the charge framed as against this appellant under Section 448 IPC."

3.13 Similar principle has been laid down in the cases of ***"Pepsi Foods Ltd. and Another Vs.***

Special Judicial Magistrate And Ors.” reported in (1998)5 SCC 749, ***“G. Sagar Suri and Another Vs. State of U.P. And Ors.”*** reported in (2000) 2 SCC 636 and ***“Kunstocom Electronics (I) Pvt. Ltd. Vs. Gilt Pack Ltd. And Another”*** reported in (2002)2 SCC 383.

4.0 On the other hand, learned Advocate for respondent Nos. 2 to 4 has submitted that the applicants had fraudulent intention of cheating respondent Nos.2 to 4 from the very beginning and hence, this application deserves to be dismissed. In support of the same learned Advocate has placed reliance on a decision of the Apex Court in the case of ***“State of Maharashtra Vs. Som Nath Thapa”*** reported in 1996 Cri.L.J. 2448 wherein at Paras-31 and 31 it has been held as under,

> “**31.** Let us note the meaning of the word “presume”. In Black's Law Dictionary, it has been defined to mean “to believe or accept upon probable evidence”. (Emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law “presume” means “ to take as proved until evidence to the

> contrary is forthcoming", Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts(either certain, or proved by direct testimony) as to the truth of a fact alleged". (Emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place edition.
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> **32.** The aforesaid show that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

4.1 Learned Advocate further submitted that merely on the ground that respondent Nos.2 to 4 while preferring the present application submitted that the dispute in question is of a civil nature, the complaint in question cannot be quashed. In support of the same, he has placed reliance on a decision of the Apex Court in the

case of ***"Kamaladevi Agarwal Vs. State of West Bengal and Ors."*** reported in AIR 2001 SC 3846 wherein in Para-12 it has been held as under,

> "12. Again in M. Krishnan Vs. Vijay Singh (Criminal Appeal No. 1028 of 20001 decided on 11.10.2001) this Court held that while exercising powers under Section 482 of the Code, the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there is always some element of civil nature. In a case where the accused alleged that the transaction between the parties are of a civil nature and the criminal court cannot proceed with the complaint because the factum of document being forged was pending in the civil Court, the court observed :
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> > "Accepting such a general proposition would be against the provisions of law in as much as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal Court the allegations made in the complaint have to be established

> independently, notwithstanding the adjudication by a civil Court. Had the complainant failed to proved the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and lay by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of."

4.2 Learned Advocate has, therefore, submitted that no interference is required from this Court in this application and, hence, the same deserves to be rejected.

5.0 Heard learned Counsel for the parties. Before proceeding with matter, it is pertinent to note that the present litigation has a very

chequered history. Initially, applicant Nos.1 to 8 and respondent Nos.2 to 4 herein had jointly approached this Court by way of this application praying to quash and set aside the impugned complaint on the ground that the dispute between the parties has been amicably resolved and a settlement has been arrived at by them. In that context, here, it would be relevant to refer to Ground-'A' and 'G' of this application which would make several aspects clear. The said grounds read as under;

> “(**A).** The petitioners submit that the dispute between the parties is essentially a civil dispute between the landlord and tenant. The matter has been amicably settled and in pursuance of the settlement arrived at between the parties, one of the conditions of the settlement is that the FIR and Charge Sheet at Annexure-A and B is to be either withdrawn or quashed by joint petition filed for quashing. It is, therefore, submitted that in view of the fact that it is a civil dispute between the land lord and the tenant, the proceedings are required to be quashed.
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> **(G).** That the allegations made in the FIR are on the basis of dcouments namely Memorandum of Understanding, wherein signature of the petitioner No.10 is not in dispute but prima facie, the signature

> of the petitioner No.9 was not found genuine and on that basis the complaint was filed and now because of the intervention of the family friends, the misunderstanding created between the parties does not exist and the original accused i.e. petitioner Nos.1 to 8, have neither taken financial assistance nor obtained any gain by using the same and therefore, no sufficient ground now exists for the proceeding against the petitioner Nos.1 to 8 and justifying the investigation against the same petitioners. Therefore, also, the FIR and the charge-sheet submitted in connection with FIR at Annexure-A are required to be quashed and set aside."

5.1 On a plain reading of the above referred grounds, it clearly transpires that respondent Nos.2 to 4 have themselves stated before this Court that the dispute between them is of a civil nature and that the same has been amicably resolved and, therefore, the complaint is required to be quashed and set aside. Now, when respondent Nos. 2 to 4 themselves have admitted that the dispute between them is of a civil nature and that the dispute has been amicably resolved, they could not, now, take a stand contrary to what was earlier taken by them while filing the present application. When both the

parties have jointly approached this Court praying to quash the impugned complaint on the ground that the dispute has been amicably settled, then this Court, in the interest of justice, should never permit the complaint to remain, otherwise, the same would amount to miscarriage of justice. However, when the parties jointly approach this Court by way of an application under Section 482 of the Cr.P.C. stating that the dispute has been settled, neither of the party could be permitted to back out from the such settlement citing one or the other reason, which this Court may find to be unsatisfactory.

5.2 In the present case, once the parties have jointly agreed to end the entire litigation and accordingly, have approached this Court by way of this application, either one of them could not be permitted to back out from such settlement on one ground or the other. In my opinion, such action on the part of the respondents is wholly

unjust and improper. The respondents cannot be permitted to take a stand contrary to the one taken by them while filing this application by producing an Affidavit-in-reply. Hence, the decision relied on by learned Advocate for the respondents in the case of ***"Kamaladevi Agarwal"*** (supra) shall not apply in this case.

5.3 Moreover, on close scrutiny of the M.O.U. entered into between the parties, it appears that the respondent No.4 filed the impugned complaint on the ground that the applicants have fabricated the documents with a view to create charge on the property tenanted to them. In that view of the matter, it would be relevant to refer to Grounds C and D of the application which reads as under;

> "**(C).** The petitioners submit that the petitioner Nos.1 to 8 have not caused any wrongful loss or wrongful gain to any one and therefore also the complaint at Annexure-A and charge-sheet at Annexure-B submitted in connection to the compliant at Annexure-A are required to be quashed and set-aside.

> **(D).** That the petitioners submit that even if the averments made in the complaint as well as the charge sheet papers are accept in their entirety and taken at its face value, then also no offence can be said to have been committed, much less an offence under Section 465, 466, 467, 471, 420, 570 and 114 of the Indian Penal Code. Therefore, also, the complaint at Annexure-A and charge-sheet at Annexure-B submitted in connection to the complaint at Annexure-A are require to be quashed and set aside."

5.4 From the above, it is evident that the documents which have been executed between the parties have not created any additional right in favour of the applicants. On the contrary, it transpires that the applicants were tenants of the property in question much prior to the execution of the said documents. It may further be noted that respondent No.3 has not disputed the fact that the said documents were not signed by him. Hence, the complaint in question is nothing but, only an after-thought filed with a view to achieve some oblique motive and harass the applicants. It may also be noted that by executing the said documents though the applicants had got the authority to create charge

on the tenanted property, none of the applicants had created any such charge. Thus, it cannot be said that the applicants had any intention of cheating respondent Nos.2 to 4. Therefore, the decision relied on by learned Advocate for the applicant in the case of ***"State of Maharashtra"*** (supra) shall not apply in the case on hand.

5.5 Apart from that it is also not in dispute that the applicants have not derived any benefit in any manner whatsoever by using the alleged forged documents. Since neither of the parties have derived any benefits nor any of them has suffered any loss, it could not be said that the documents in question were forged to attain or derive any benefit out of the same. In view of the above discussion, I am of the opinion that the impugned complaint cannot be sustained and is required to be quashed and set aside.

6.0 In the result this application is allowed. The FIR being I-C.R. No.595 of 2004

registered with Ellisbridge Police Station, Ahmedabad as well as the proceedings in Criminal Case No.13376 of 2005 pending before the learned Metropolitan Magistrate, Court No.22, Ahmedabad arising out of the said complaint are quashed and set aside. Rule is made absolute.

(K.S. Jhaveri,J.)

Umesh/